

EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE EVIDENCE SESSION: ACCESS TO JUSTICE, 14 MARCH 2023 – SHELTER SCOTLAND WRITTEN EVIDENCE

Introduction

Shelter Scotland exists to defend the right to a safe home and fight the devastating impact the housing emergency has on people and society. We work in communities to understand the problem and change the system. We run national campaigns to fight for home.

We are pleased to have the opportunity to give evidence to the Equalities, Human Rights and Civil Justice Committee as part of its work on Civil Justice. The evidence session reflects an important strand of our work and we're keen to share our expertise with the committee.

Scotland has strong housing laws but despite this, people's housing rights are breached every day. Shelter Scotland's advice services aim to inform and support people to advocate for their rights and have access to justice, and we campaign for the structural changes required to end the growing national housing emergency. In 2022 we published our Scottish Housing Emergency Action Plan¹ which outlines what needs to be done to realise housing rights, protect households from homelessness and poor housing and to reduce affordable housing need by 2026. It includes the three key commitments we believe are required from government:

- **Buy and build 38,500 social homes by 2026**
 - Redirect all subsidy from the Scottish Government's Affordable Housing Supply Programme exclusively to homes for social rent
 - Undertake a national social housing acquisition plan to buy homes in areas of greatest need
 - Force the reluctant owners of long-term empty homes to sell up or rent them out to people who are homeless or on the housing waiting list
- **Fully fund local homelessness services**
 - Conduct an audit of all homelessness funding – national and local – to identify the true levels of investment and identify shortfalls
 - Create a new 'homelessness emergency' fund to plug the gap in funding and direct additional resource where it is most needed
- **Guarantee the right to a home for everyone experiencing homelessness**
 - Urgently prioritise action to address failures in the homelessness system ensuring appropriate redress for individuals where their rights have been breached
 - Introduce tougher enforcement action against public bodies that repeatedly breach their legal duties

¹ Shelter Scotland, [Scottish Housing Emergency Action Plan](#) (2022)

Main issues – the housing emergency

The number of households and children in temporary homeless accommodation is at a record high, and households are spending increasingly long periods stuck in temporary accommodation. The number of open homeless cases is also the highest ever recorded.

The Scottish Housing Regulator recently reported that there is an “emerging risk of systemic failure” by local authority homelessness services and that “some councils are reaching the limits of their capacity to respond effectively to the demands from people applying for help, the range of policy and statutory requirements they must meet and impacts from the wider economic context”². This concern is reflected in our services regular experiences supporting people experiencing homelessness whose rights have been breached, and by the national statistics which report, for instance, that 300 households were not provided temporary accommodation when they should have been between April and September 2022 (likely an undercount), and that there were 1,470 breaches of the Unsuitable Accommodation Order in the same period.³

Supply of social housing

Upholding the right to a home requires an adequate supply of social homes, and without such local authorities are unable to deliver on their statutory duties.

- The Scottish Government must urgently deliver the social homes needed to reduce housing need and tackle the growing backlog in temporary accommodation.

Poverty

Pre-pandemic eviction actions were the third most common type of civil action raised in our courts. The majority of these cases concerned tenants in rent arrears. Whilst legislative measures introduced during the pandemic and in response to the cost-of-living crisis have provided some temporary protection and respite, they have not addressed the underlying issue of poverty. Many of our clients are in receipt of welfare benefits which do not adequately cover their living costs or employed in precarious and low paid work which does not provide them with the means to live a dignified life.

The impact of homelessness on health and wellbeing

Our law service has seen an increase in homeless case referrals. These cases fall under three broad themes: failure of local authority to take a homeless application; failure of local authority to provide temporary homeless accommodation or challenge to the suitability of the temporary accommodation provided.

In January 2021 the law on unsuitable temporary homeless accommodation was amended to ensure that the needs of vulnerable people are met. (The Homeless

² Scottish Housing Regulator, [Homelessness Services in Scotland – A Thematic Review](#) (2023)

³ Scottish Government, [Homelessness in Scotland, update to 30 September 2022](#). There are known issues with the quality of data on the Unsuitable Accommodation Order and this is likely an undercount.

Persons (Unsuitable Accommodation) (Scotland) Order: guidance, 31 January 2021).

The Inner House of Court of Session recently ruled that the relevant legal provision did not require a local authority to meet the needs of the household⁴, and that if that had been parliament's intention, the legislation would have been drafted to read 'meet the needs'. As a consequence of this decision some of Scotland's most vulnerable homeless households will lose out. The needs arising from mental disability; neurodiversity; addiction and domestic abuse are no longer given the same level of protection.

This decision highlights the importance of detail in drafting of legislation, and that the law needs to be strengthened if we are to ensure those at the sharpest end of the housing emergency, including the thousands of families experiencing homelessness and trapped in temporary accommodation are able to live in accommodation that meets their needs.

We hope that the Scottish Government and MSPs will take note of this decision and the impact that it will have on homeless households, and seek to remedy this gap in the law in the forthcoming housing bill.

Barriers to people accessing advice and resolving problems

Rights awareness

One of the biggest barriers we see in people being able to access advice, access their rights and receive the support they are entitled to is know that they possess these rights in the first place.

The [independent evaluation of the Private Residential Tenancy \(PRT\) funded by Nationwide Foundation](#) found that private tenants' awareness of their rights is low and stated that: "more work is needed, led by Scottish Government and involving wider advisory stakeholders, to raise awareness of rights as a starting point to empower tenants and increase their access to justice". Our advice services regularly work with private tenants who have a poor understanding of their rights in relation to their tenancy agreements, particularly those with less financial power, and also a lack of knowledge surrounding how they enforce their rights.

Whilst the social sector is far more organised than the private sector, and social landlords have more extensive responsibilities, our advice services often still hear from social tenants who have a lack of awareness of their rights.

In particular, there has been multiple changes to the rights of both social and private tenants under the Covid emergency legislation as well as the Cost of Living (Tenant Protection) (Scotland) Act in recent years. In both instances, our advisers have reported confusion amongst tenants on what their rights are, restricting their ability to realise these rights. In relation to the Cost of Living Act in particular, tenants are often misunderstanding the emergency legislation to mean they aren't at risk of eviction, which may not be the case due to the exemptions within the Act.

⁴ X v Glasgow City Council [2023] SLT 163 para 38

As we highlighted in [our briefings on the Act](#), a large-scale rights awareness raising programme is required to ensure all tenants are aware of their rights in relation to the emergency legislation, and the support that is available to them.

As an indication of the increased need for advice since the middle of September last year, there has been an increased interest in the advice pages on our website, with people seeking to find out what their rights are in the current crisis. Nearly 16,000 people accessed our site looking for this information between 16 September and early December, making clear the need for clear information on housing rights to be provided.

We strongly recommend that the Scottish Government writes to all private and social tenants to make them aware of emergency legislation and the resulting changes to their rights, as it did with the emergency legislation changes during the coronavirus pandemic.

- Use should be made of the national landlord register. The Scottish Government should be promoting and supporting local authorities to communicate with private tenants on their rights, via their details recorded in the register.
- There needs to be ongoing national communication to tenants, through multiple channels, on their rights and future changes to these rights.

Equalities challenges

Individual circumstances and characteristics can also affect people's ability and experience in seeking advice, representation and support. We see this in a variety of ways through our work. For instance, women facing domestic violence often face barriers due to the nature of their situation. Barriers also exist for people with physical or mental health issues, with services not always able to respond well to people's specific needs, either from a lack of awareness of what those needs are, a lack of resource, or a combination of challenges. Digital exclusion is another important issue for our client base – this can come in the form of difficulties accessing devices, Wi-Fi, literacy and language barriers or people requiring support to fill out forms, as well as the need for digital advice to consider accessibility requirements. Exclusively digital services cannot cater for everyone's needs.

We also know there is an overrepresentation from people from specific minority ethnic groups in the homeless system and facing housing issues, and particular barriers for them in accessing advice and support. Our race research project is looking into this in more detail, and we hope to engage more with the Committee on this issue in the near future.

Lack of accountability and enforcement

Even when people are aware of their housing rights, action does not always lead to a positive outcome. As noted above, we are still seeing a large number of instances of 'gatekeeping', where a homeless household is not provided with the temporary accommodation they are entitled to. Likewise, the number of UAO breaches has increased rapidly in recent years – not all due to the amendment to this legislation. Despite local authorities not enforcing these legal duties, they face very little in the way of consequences for doing so.

In urgent homelessness cases, the primary legal remedy is judicial review. However, this is costly and requires input of both solicitor and advocates and in our experience, when judicial review proceedings are raised, local authorities often resolve the case which is a positive outcome for the individual concerned but often means that the underlying system issues/ practices are never challenged. The proposal to enable organisations with sufficient interest to have standing in a case in the new Human Rights Bill will help to overcome some of the undue pressure on individuals to tackle these systemic breaches.

In the case of illegal eviction of private tenants, as well as a lack of awareness amongst tenants, awareness from Police Scotland can prevent the appropriate repercussions. For a landlord to be charged with illegal eviction tenants must be aware that their landlord's behaviour is criminal and be confident enough to report this to the police. The police also need to be aware of what an illegal eviction is, support the tenant, and where required prepare a report to send to the procurator fiscal who will decide whether to pursue a prosecution. Too often, tenants who report an illegal eviction to the police are often incorrectly told it is a civil matter and so the police cannot help. Any increase in illegal eviction damages is welcome, as it has been during the Cost of Living Act, but increased penalties will not be effective if tenants and law enforcers are not aware of tenant rights.

- Further awareness raising work is required to ensure Police Scotland must always treat an illegal eviction as a criminal matter and not a civil matter.

Legal representation

The right to respect for the home is a fundamental human right, however many tenants are unable to access the legal advice and representation they need to defend eviction proceedings.

There is a lack of legal representation for housing cases as well as limited housing and homelessness lawyers. This is in large part because the rates of legal aid pay in Scotland are low, meaning that in practice it's only subsidised law centres who can provide representation.

Similarly, although the use of the First-tier Tribunal for housing cases was intended to offer "a new, more accessible and effective route to justice for landlords and tenants in the sector", tenant attendance and representation at hearings is low pointing to a potential power imbalance between tenants and landlords using the tribunal. [Data analysis carried out by Shelter Scotland](#) found that in four out of five cases, the tenant did not attend their hearing, and in most of the cases (88% of those we analysed) there was no representation or support for tenants recorded as present. Conversely, when the applicant was a landlord (as in most cases) the landlord had professional representation in three out of four cases.

There are several ways access to justice for tenants in the Tribunal could be improved:

- Ensuring that legal aid funding is easily available to defend eviction proceedings;
- Increase legal aid rates, to enable solicitors in private practice to undertake this type of work;

- Better collection and publication of data - the data routinely recorded and published by the Tribunal should be expanded, making information more freely available and allowing for better analysis of the Tribunal process and a deeper understanding of tenants' experiences.
- Training for advice providers - there needs to be a focus on capacity building for organisations that provide housing advice and support. There is currently a lack of training for providers in how to support tenants through the Tribunal system, and so there needs to be additional resources created to meet this need.
- As tenant attendance and representation at Tribunal is so low, consideration should be given to other tools which may help tenants actively participate and put forward their case using the Tribunal system. This could, for example, include a digital tool or advice pre-hearing.

Incorporation of the UN right to adequate housing in Scots law

Legislating for the human right to adequate housing in Scots law, via the upcoming Human Rights Bill, will be a major step forward and is something we have long campaigned for. We look forward to working with the government to develop these proposals, to deliver on the human rights principles of accountability and empowerment and to address many of the access to justice issues resulting in an implementation gap in housing and homelessness and beyond.